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JUN 25 1992

Federal Communications Commission
Office of the Secretary

JOINT REPLY COMMENTS OF NON-PROFIT GROUP

I. Introduction

^{1/} FCC 92-176, released April 17, 1992; 7 FCC Rcd. 2735.

These reply comments address only those public policy issues relating to proposed Rule 64.1100(c)(4).

2. Each of the parties in the Non-Profit Group is a major tax-exempt organization which makes, or plans to make, use of one or more independent telemarketing service firms for fundraising and "issue-awareness" campaigns. A brief description of each of the parties in the Non-Profit Group is attached hereto as Appendix 1.

3. The Non-Profit Group supports proposed Rule 64.1100(c)(4) which defines certain of the telephone calls which would be exempt from the proposed new restrictions on telephone solicitations. Rule 64.1100(c)(4) as presently written would exempt calls made by or on behalf of tax-exempt organizations. The exemption of both categories of calls for tax-exempt organizations will have little, if any, impact if the Commission adopts only rules which restrict those telephone solicitations made with the use of automatic dialing equipment and artificial or pre-recorded voices. Pre-recorded messages are generally not suited to the telemarketing needs of tax-exempt organizations and are rarely, if ever, used. However, the exemption will have an important impact if the Commission also adopts rules restricting "live" telemarketing calls to residences or businesses pursuant to 47 U.S.C. § 227(c).

II. Comments Received on Proposed Rule 64.1100(c)(4)

4. To the limited extent that the comments filed herein addressed proposed Rule 64.1100(c)(4), opinion was divided.

Reese Brothers, Inc.^{2/} filed detailed comments supporting the proposed rule. The Non-Profit Group supports the Comments of Reese Brothers and urges that the Commission give full and favorable consideration to them.

5. Significantly, proposed Rule 64.1100(c)(4) was also supported by the Direct Marketing Association ("DMA"), one of the leading trade groups for the telemarketing industry (see page 13 of DMA's comments).

6. On the other hand, a very limited number of parties questioned the need for the exemption. In some cases, the commenting parties objected to the exemption of any calls made by or on behalf of non-profit organizations.^{3/} In one case, the comments objected only to the exemption of those calls made by independent telemarketing service firms on behalf of tax-exempt organizations.^{4/}

7. Operational factors make the use of independent telemarketing firms very valuable to many non-profit organizations. For the reasons described below, it is

^{2/} Reese Brothers is a leading provider of telemarketing services to non-profit organizations. Its customers include some, but not all, of the parties participating in these joint reply comments.

^{3/} See, for example, the comments of the National Consumers League (at page 10), Consumer Action (at page 4), Privacy Times (at page 4) and Private Citizen, Inc. (at page 5).

^{4/} See the comments of the Public Utility Commission of Texas which proposed, without a single word of explanation, to remove the exemption for calls made on behalf of tax-exempt organizations.

important that the rules finally adopted by the Commission in this proceeding include the exemption now embodied in proposed Rule 64.1100(c)(4).

III. The Roles of Volunteers and Paid
Telemarketers in the Telemarketing and
Other Activities of Tax-Exempt Organizations

8. Non-profit organizations are today under mounting financial pressure as a result of increasing program and administrative costs at a time of sharp cutbacks in funding and other support from federal, state and local government agencies. Consequently, there is ever-greater competition among non-profits for the limited pools of both money and volunteer time available from individuals, businesses and foundations. In recent years, non-profits have turned increasingly to telemarketing programs to aid them in the competition for these resources.

9. Most tax-exempt organizations with broad membership bases engage in three types of telemarketing activities:

- (a) soliciting additional donations of money and volunteer time from their existing members and other supporters;
- (b) expanding their member/supporter lists through targeted telephone contacts with categories of individuals believed likely to be supportive of the organization;
- (c) conducting "issue-awareness" campaigns which seek to increase the public's awareness of both the organization and the policy issues and programs which it deems important.

10. For many years, it has been widely recognized that campaigns to expand donor/volunteer lists are the most difficult and expensive of the three telemarketing tasks identified above. Therefore, many non-profits have long used paid telemarketers for that task -- sometimes using in-house employees but more often using outside telemarketing service firms.

11. More recently, many non-profits have recognized that most of their volunteers: (i) lack the training and/or disposition to be truly effective in any of the three types of telemarketing campaigns; and (ii) are reluctant to take on telemarketing chores. The non-profits have also come to recognize that some otherwise very valuable volunteers will simply drop-out of an organization if they are pressured to work on telemarketing campaigns.

12. While the typical volunteer is not as willing or expert as a paid telemarketer in conducting telephone solicitations, he or she is often much more effective than a paid staff member in: (i) telling the organization's story in other forums; (ii) informing legislative and regulatory bodies of the organization's positions on programs and public policy questions; and (iii) accomplishing other elements of the organization's "program of work". This is so because volunteers typically have had substantial, personal involvement in the health, safety, educational, charitable, civic or other issues or programs of interest to the organization. Thus, they

have a credibility in many situations that a paid employee lacking that personal involvement with the issue or program simply does not have.

13. Given the differing interests and capabilities of paid and volunteer staff members, the challenge for non-profits is to use their scarce human resources, both paid and volunteer, with maximum efficiency and effectiveness. As a part of their efforts to optimize staff utilization, many non-profit organizations now place greater reliance on paid telemarketers in conducting telephone solicitation campaigns. This increases the effectiveness of their telemarketing campaigns and frees volunteers to do the tasks they do best. For example, MADD and Just Say No make greater use of paid telemarketers so that their volunteers are able to spend more of their time: (i) conducting alcohol and drug abuse programs among students; (ii) monitoring court proceedings involving drunk driving and drugs; and (iii) counseling the families of those killed or injured as a result of drunk driving or drug abuse.

14. The organizations participating in these joint reply comments have found that their volunteers are happier doing this programmatic work and are in fact willing to contribute even more time if they are not called upon to do telephone soliciting. Equally important, increased use of paid telemarketers with appropriate training and experience has

enabled these organizations to achieve better financial results from their telemarketing campaigns even after deducting the cost of the paid telemarketers.

15. Several organizations joining in these reply comments are large enough to employ specially trained and experienced telemarketers on their in-house staffs. However, even some of the largest organizations in the Non-Profit Group choose not to hire in-house telemarketing staffs because they have determined that, for their purposes, it is more cost-effective to use independent telemarketing service firms.^{5/} Significantly, those organizations in the Non-Profit Group which have in-house telemarketing staffs also regularly use outside telemarketing

^{5/} Over the years, there has been very visible criticism by the news media and others of the occasional abuses in fundraising campaigns conducted by telemarketing service firms for tax-exempt organizations. In fact, that criticism is expressed in the comments herein of Consumer Action and is one of the bases for its argument that the Commission should not exempt calls for non-profit organizations from the new restrictions.

While abuses occasionally occur, the plain fact is that tax-exempt organizations regularly employ responsible telemarketers to conduct fundraising and issue awareness campaigns -- often at relatively lower costs than the non-profits could conduct the campaigns themselves.

Certainly Congress did not intend for the Commission to tailor the rules it adopts in this proceeding to curb the occasional telemarketing abuses by the unscrupulous. The problem of abuses in fundraising campaigns purportedly for the benefit of tax-exempt organizations can best be dealt with through aggressive prosecution of offenders under existing criminal laws.

service firms to handle their peak-load needs. Telemarketing service firms are even more important to the smaller tax-exempt organizations (typically the newer groups and those advocating more controversial positions) which simply cannot afford staffs of skilled in-house telemarketers.

16. In view of the foregoing, it would be inappropriate for the Commission to exempt from the new limitations only those telephone solicitations made by the in-house staffs of tax-exempt organizations. Such an approach would discriminate unfairly against the smaller tax-exempt organizations and make it more difficult for the larger organizations to operate efficiently. For the many sound public policy reasons noted by the Commission in the Notice and by the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation in their Reports on H.R. 1304 and S. 1462, the Commission should exempt from the new rules all calls made either by or on behalf of non-profit organizations.

IV. Constitutional Law Considerations

17. The U.S. Supreme Court has held that the speech of tax-exempt organizations -- specifically including speech devoted to their fund-raising activities -- is entitled to the full protection of the First Amendment. In Village of Schaumburg v. Citizens for a Better Environment, 444 U.S. 620 (1980), the Court recognized that the fundraising drives of tax-exempt organizations almost invariably involve the advocacy of positions on important public policy issues and programs.

18. More recently, the Court held that it is the message, rather than the speaker, which is entitled to First Amendment protection. In Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781 (1988), the Court specifically held that a tax-exempt organization's message is entitled to full constitutional protection whether it is delivered directly by the organization or through the conduit of an independent telemarketing service.

19. While the First Amendment does not completely insulate any speech from all government regulation, the Non-Profit Group submits that the Commission's proposed exemption of calls made by or on behalf of tax-exempt organizations is required under applicable U.S. Supreme Court decisions.

V. Editorial Revision of Proposed Rule 64.1100(c)

20. The Non-Profit Group shares the concern expressed by Reese Brothers that proposed Rule 64.1100(c) is ambiguous in some respects. We urge that it be editorially revised as proposed by Reese Brothers.

21. The Public Utilities Commission of Texas ("PUC") has also recommended changes in proposed Rule 64.1100(c). The PUC's comments, at page 4, suggest that the changes it recommends are editorial in nature and limited to deleting "... unnecessary words that confuse its meaning". In fact, the language changes proposed by the PUC would dramatically alter the substance of Rule 64.1100(c). If the PUC's changes were adopted, all calls made on behalf of tax-exempt organizations

would be subject to all new regulations the Commission adopts in this proceeding. Despite the major substantive change which the PUC proposes, its comments do not even acknowledge that it proposes a substantive change, let alone provide any information or arguments to support that change.

22. The Non-Profit Group strongly urges that the Commission make those editorial changes in proposed Rule 64.1100(c) suggested by Reese Brothers^{§/} and that it reject the substantive change in that rule proposed by the PUC.

VI. Conclusion

23. For the reasons set forth above, the Non-Profit Group urges that the Commission include Rule 64.1100(c)(4), with the editorial changes described above, in its final rules so as to

^{§/} Specifically, the Non-Profit Group urges that proposed Rule 64.1100(c) be revised to read as follows:

(c) The term "telephone call" in Sec. 64.1100(a)(2) shall not include a call or message that:

(1) is not made for a commercial purpose,

(2) is made for a commercial purpose but does not include the transmission of any unsolicited advertisement,

(3) is made to any person with whom the caller, or the person on whose behalf the call is made, has had a prior or current business relationship at the time the call is made, or

(4) is made by or on behalf of a tax-exempt non-profit organization.

exempt calls by or on behalf of tax-exempt organizations from the regulations specifically proposed in the Notice and any additional rules the Commission may adopt pursuant to 47 U.S.C. § 227(c) restricting other types of "live" telephone solicitations to residential and/or business telephone subscribers.

Respectfully submitted,

THE AMERICAN INSTITUTE FOR CANCER
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June 25, 1992

Following are very brief descriptions of each of the six tax-exempt organizations participating in these joint reply comments.

American Institute for Cancer Research

The American Institute for Cancer Research is a tax-exempt organization established under District of Columbia law which maintains its headquarters in Washington. Its objective is to provide financial support for research into the relationship between diet, nutrition and cancer and to expand consumer knowledge about the importance of diet and nutrition in the prevention and treatment of cancer.

California Consortium for the Prevention of Child Abuse

This California corporation is a tax-exempt organization with its principal office in Sacramento. It is a statewide chapter of the National Committee for the Prevention of Child Abuse. The California organization has been in existence for 15 years. It is a coalition of some 15,000 individuals and local organizations across the state. It provides state-wide coordination, support and leadership to individuals and local organizations working to prevent and treat child abuse and neglect in California.

Federation on Child Abuse & Neglect

This organization is based in Albany, New York. It is the New York affiliate of the National Committee for the Prevention of Child Abuse, Inc. The Federation includes 45 local community coalitions and 65 affiliated organizations throughout the State of New York. The Federation's mission is to promote efforts to develop effective public policies and services to prevent child abuse and neglect.

Its long-term goals include the development of programs to: identify and implement effective strategies for the prevention of child abuse and neglect; increase public awareness of the child abuse problem; and establish an informed and effective statewide network of child abuse prevention organizations.

"Just Say No" International

"Just Say No" is an Oakland, California-based corporation committed to helping prevent drug use by children and teenagers. To achieve this purpose, "Just Say No" has some 11,000 adult and 8,000 teenage leaders who provide direction and support for some 13,000 "Just Say No" clubs across the Country. This is the

largest youth anti-drug movement ever to emerge in this country. Through its work with these grassroots organizations, "Just Say No":

- (i) fosters and reinforces an attitude of intolerance toward drugs and drug use;
- (ii) promotes healthy lifestyles and constructive alternatives to the use of dangerous drugs; and
- (iii) provides children and teenagers with the information, skills and support they need to resist peer pressure and other influences to use drugs.

Mothers Against Drunk Driving

Mothers Against Drunk Driving ("MADD") is a District of Columbia non-profit corporation which maintains its headquarters in Irving, Texas. MADD is committed to stopping drunk driving and supporting the victims of auto crashes involving drunk drivers. This national organization has over 2.8 million supporters who are actively involved in the work of its more than 400 local chapters.

Vietnam Veterans Memorial Fund, Inc.

This District of Columbia non-profit corporation maintains its headquarters in Washington. Its 650,000 supporters nationwide provided in excess of \$8,000,000 for the construction of the Vietnam Veterans Memorial on the Mall in Washington. The organization now provides funding for: ceremonies at the Memorial; the addition of names; renovation and maintenance; and such other support as may be needed.

CERTIFICATE OF SERVICE

I, Cynthia M. Gonzalez, hereby certify that a copy of the foregoing "Joint Reply Comments of Non-Profit Group" was forwarded by first class U.S. mail, postage prepaid, this 25th day of June, 1992, to each of the following:

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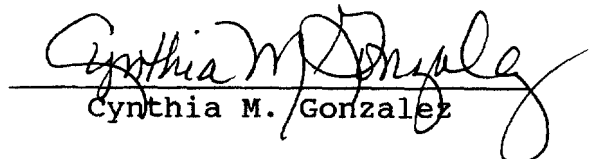
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